

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

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In re:

JENNIFER McKINNEY AND  
ISRAEL McKINNEY

Case No. 22-11558  
Chapter 13  
Hon. Rachel M Blise

Debtors.

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**UNITED STATES' RESPONSE TO MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY FILED BY MARINE CREDIT UNION**

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The United States of America, on behalf of the Internal Revenue Service (IRS), responds to the motion filed by Marine Credit Union (the Motion), on December 23, 2022, in which Marine Credit Union seeks relief from the automatic stay on the debtors' property located at W5441 Innsbruck Road, West Salem, Wisconsin (the Property). ECF No. 77.

The IRS does not oppose the Motion if Marine Credit Union intends on seeking a judicial foreclosure sale (versus a non-judicial foreclosure sale<sup>1</sup>). The IRS further responds to the Motion to state that, should the Court grant Marine Credit Union's request for relief from the automatic stay, IRS should also be granted relief from the automatic stay related to this Property. The IRS has prepetition federal tax liens on the Property, protected by duly filed prepetition Notice of Federal Tax Liens under 26

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<sup>1</sup> The IRS opposes lifting the stay for a non-judicial foreclosure. The reason is that, in a judicial foreclosure, the IRS can seek the appointment of a real estate agent as a receiver and thereby extract full market value and a sale that is not subject to redemption and thus without the discount associated with a sale subject to redemption rights. *See* 26 U.S.C. § 7403(d) (receiver to enforce tax lien). The United States frequently uses that procedure for residential real property worth considerably more than senior encumbrances.

U.S.C. § 6323. There is value in the Property in excess of the mortgage that is subject to the federal tax lien<sup>2</sup>, and IRS will need relief from the automatic stay to enforce its lien in a counterclaim or request for surplus proceeds in any future foreclosure proceedings.

WHEREFORE, the IRS asks that the Court only grant Marine Credit Union relief from the automatic stay for purposes of seeking a judicial foreclosure sale and that, if the Court grants such relief to Marine Credit Union, it likewise grant IRS the same.

Dated this 6th day of January, 2023.

Respectfully Submitted,

TIMOTHY M. O'SHEA  
United States Attorney

By:

/s/Theresa M. Anzivino  
Theresa (Esa) M. Anzivino  
Assistant United States Attorney  
Western District of Wisconsin  
222 W. Washington Avenue, Ste 700  
Madison, WI 53703  
Phone: (608) 264-5158  
[theresa.anzivino@usdoj.gov](mailto:theresa.anzivino@usdoj.gov)

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<sup>2</sup> The bankruptcy schedules list the Property's value at \$450,000 (though, the IRS believes the Property likely is worth more), ECF No. 34 at 3, and Marine Credit Union has asserted it currently is owed \$312,526.90, ECF No. 77 at 3, leaving more than \$100,000 in equity for IRS's lien.